

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division

IN RE: HEALTH DIAGNOSTIC LABORATORY,  
INC., *et al.*,  
  
Debtors.

Case No. 15-32919  
Chapter 11  
(Jointly Administered)

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RICHARD ARROWSMITH, as Liquidating  
Trustee of the HDL Liquidating Trust,

Plaintiff,

v.

APN No. 16-03271

LATONYA S. MALLORY, *et al.*,

Defendants.

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**CORRECTED ORDER**

Before the Court in this adversary proceeding are thirteen motions<sup>1</sup> filed by various individual Defendants and groups of Defendants seeking to dismiss (the “Motions to Dismiss”)

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<sup>1</sup> The Motions to Dismiss under consideration are: Motion of Defendants Leah Bouton *et al.* to Dismiss Complaint Pursuant to Rules 8, 9, 10, 20, and 41, Fed. R. Civ. P., *In re Health Diagnostic Laboratory, Inc.*, No. 16-03271 (Bankr. E.D. Va. Nov. 21, 2016), ECF No. 32; Defendants Advanced Medical Sales LLC, *et al.*’s Motion to Dismiss Pursuant to Rules 8, 9, 10, 20, and 41, Fed. R. Civ. P., *In re Health Diagnostic Laboratory, Inc.*, No. 16-03271 (Bankr. E.D. Va. Nov. 22, 2016), ECF No. 35; Motion to Dismiss Pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) filed by Defendants Patrick W. Colberg, Nicole Finn, Leigha Stream, EELLS Consulting, Inc. and Medcentric, LLC, *In re Health Diagnostic Laboratory, Inc.*, No. 16-03271 (Bankr. E.D. Va. Dec. 16, 2016), ECF No. 75; Bouton Motion to Dismiss, *In re Health Diagnostic Laboratory, Inc.*, No. 16-03271 (Bankr. E.D. Va. Dec. 16, 2016), ECF No. 78; JP Cornwell, Inc. and Jeffrey “Boomer” Cornwell’s Motion to Dismiss Adversary Proceeding Pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure or Alternatively Motion to Sever Pursuant to Rule 21 of the Federal Rules of Civil Procedure, *In re Health Diagnostic Laboratory, Inc.*, No. 16-03271 (Bankr. E.D. Va. Jan. 13, 2017), ECF No. 100; Scott Mallory’s Motion to Dismiss, *In re Health Diagnostic Laboratory, Inc.*, No. 16-03271 (Bankr. E.D. Va. Jan. 13, 2017), ECF No. 102; Motion to Dismiss of Defendants BlueWave Healthcare Consultants, Inc. *et al.* Pursuant to Rule 12(b)(6), *In re Health Diagnostic Laboratory, Inc.*, No. 16-03271 (Bankr. E.D. Va. Jan. 13, 2017), ECF No. 103; G. Russell Warnick’s

the Complaint (the “Complaint”) of Richard Arrowsmith in his capacity as Liquidating Trustee of the HDL Liquidating Trust (the “Liquidating Trustee”) pursuant to Bankruptcy Rule 7012 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rule(s)”), which incorporates Civil Rule 12(b)(6) of the Federal Rules of Civil Procedure (the “Civil Rule(s)”), for to failure to state a claim upon which relief can be granted and Bankruptcy Rule 7041, which incorporates Civil Rule 41(b), for failure to comply with the Civil Rules. For the reasons set forth in this Court’s Memorandum Opinion entered concurrently with this Order,

**IT IS ORDERED** that the Defendants’ Motions to Dismiss be, and they hereby are, **GRANTED** with respect to Counts 62, 63, and 64; it is

**FURTHER ORDERED** that the claims asserted by the unnamed Assigning Creditors in Counts 67, 68, 69, 70, 71, 72, and 73 be, and they hereby are, **DISMISSED**; it is

**FURTHER ORDERED** that the Motions to Dismiss the claims asserted by the named Assigning Creditors, Aetna and Cigna, be, and they hereby are, **DENIED**; it is

**FURTHER ORDERED** that the Liquidating Trustee is granted leave to amend his Complaint within 21 days of entry of this Order with respect to Counts 67, 68, 69, 70, 71, 72, and 73 in order to properly disclose the unidentified Assigning Creditors by name; it is

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Motion to Dismiss and Memorandum of Law in Support, *In re Health Diagnostic Laboratory, Inc.*, No. 16-03271 (Bankr. E.D. Va. Jan. 13, 2017), ECF No. 106; Latonya S. Mallory’s Motion to Dismiss, *In re Health Diagnostic Laboratory, Inc.*, No. 16-03271 (Bankr. E.D. Va. Jan. 13, 2017), ECF No. 108; Karl F. Warnick and Kristan Warnick in their capacity as Trustees of the Warnick Family 2012 Irrevocable Trust, the Warnick Family LLC and Warnick Management, LLC’s Motion to Dismiss, *In re Health Diagnostic Laboratory, Inc.*, No. 16-03271 (Bankr. E.D. Va. Jan. 13, 2017), ECF No. 110; Motion of Janet Mallory Curtin, in her capacity as Trustee of the Latonya Mallory 2012 Irrevocable Trust to Dismiss Complaint, *In re Health Diagnostic Laboratory, Inc.*, No. 16-03271 (Bankr. E.D. Va. Jan. 13, 2017), ECF No. 114; Motion of Defendants Tipton Golias, Joseph Golias, Donald Golias, Karla Falgout, Tipton Golias in his capacity as Trustee of the Wyndell L. Golias Voting Trust, Robert S. Galen, Noel D. Bartlett, Jr., Eric Petersen, David Mayes, John Tessler, and Pamela Oates to Dismiss in Part, *In re Health Diagnostic Laboratory, Inc.*, No. 16-03271 (Bankr. E.D. Va. Mar. 1, 2017), ECF No. 178; Motion of Defendants Galen Associates, Inc. and Helena Laboratories Corporation to Dismiss All Counts Against Them, *In re Health Diagnostic Laboratory, Inc.*, No. 16-03271 (Bankr. E.D. Va. Mar. 15, 2017), ECF No. 195.

**FURTHER ORDERED** that the claims of any unidentified Assigning Creditors in Counts 67, 68, 69, 70, 71, 72, and 73 shall be reinstated upon the Liquidating Trustee's timely amendment of his Complaint; and it is

**FURTHER ORDERED** that the Defendants' Motions to Dismiss be, and they hereby are, **DENIED** with respect to all remaining Counts.

ENTERED: Aug 9 2017

/s/ Kevin R. Huennekens  
UNITED STATES BANKRUPTCY JUDGE

Copies to:

Entered on Docket: Aug 9 2017

All Parties.